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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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CAROL J. SCHIAVO, MARTIN BANYARD and :	No. 07 Civ. 6666 (SCR)
DERRIELL DORSEY,	
Plaintiffs,	
	<u>ANSWER TO</u>
	<u>AMENDED COMPLAINT</u>
-against-	
DR. JAMES B. PEAKE, in his official capacity as	
Secretary of Veterans Affairs,	
Defendant.	
----- x	

Defendant Dr. James B. Peake,¹ in his official capacity as Secretary of the Department of Veterans Affairs (“Defendant”), by his attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, responds to the amended complaint dated October 18, 2007 (the “complaint”) upon information and belief as follows:

1. The allegations in paragraph 1 purport to characterize plaintiffs’ claims in this action, to which no response is required. To the extent a response is required, denies the allegations in paragraph 1.
2. Paragraph 2 states conclusions of law to which no response is required. To the extent a response is required, deny the allegations contained in that paragraph, except admit that

¹ Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Dr. James B. Peake is automatically substituted as defendant for the former Secretary, R. James Nicholson.

jurisdiction is specifically conferred upon this United States District Court by Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq., and 28 U.S.C. §§ 1331, 1343.

3. Paragraph 3 states a conclusion of law to which no response is required. To the extent a response is required, admits that plaintiffs' claims arose in the Southern District of New York.

4. Admits the allegations in the first sentence of paragraph 4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 4.

5. Admits the allegations in paragraph 5.

6. Denies the allegations in paragraph 6.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.

8. Denies the allegations in paragraph 8.

9. Denies the allegations in paragraph 9.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10.

11. Denies the allegations in paragraph 11.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12.

13. Denies the allegations in paragraph 13.

14. The final and un-numbered paragraph beginning with "WHEREFORE" states plaintiffs' request for relief, to which no response is required.

DEFENSE

15. The complaint fails to state a claim on which relief can be granted.

DEFENSE

16. Plaintiffs have failed to exhaust their administrative remedies.

DEFENSE

17. Some or all of plaintiffs' claims are time-barred.

WHEREFORE, defendant demands judgment dismissing the complaint and granting such other and further relief as this Court deems proper, including his costs and disbursements.

Dated: New York, New York
April 18, 2008

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